

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Operations Division
Regulatory Branch (North)
ID No.LRL-2011-922-sam

All American RV Resources I, LLC
2042 Broadway
Fort Wayne, Indiana 46802

Dear Sir or Madam:

During an inspection conducted on September 13, 2011, by Corps of Engineers' personnel, it was found that fill material had been discharged into approximately 1.2 acres of wetlands abutting Blue Lake. The project is located at the Blue Lake Campground in Section 10, Township 32 North, Range 10 East, Whitley County, Indiana.

The Corps of Engineers exercises regulatory jurisdiction on Blue Lake and its abutting wetlands under the Clean Water Act (CWA). It is unlawful under Section 301 of this Act (33 USC 1311) to place dredged or fill material into "waters of the United States" without prior authorization. Normally, the authorization is in the form of a Department of the Army (DA) permit issued in accordance with the provisions of Section 404 of the CWA (33 USC 1344). A copy of Section 404 is enclosed for your information.

According to our records, no DA permit has been issued authorizing the work referenced above. Therefore, the work which has been done constitutes a violation of Section 301 of the CWA.

This letter will serve as a formal Cease-and-Desist Order specifically prohibiting any further activity involving the discharge of fill into Blue Lake or its abutting wetlands. Such activity may not resume unless and until the work is authorized by a DA permit.

In this particular instance, we have determined that the work has not resulted in an irreversible adverse impact on the public interest. Therefore, we have decided not to pursue prosecution provided that either:

a. The unauthorized fill material placed into the jurisdictional wetland be removed and the area restored to original contours; or

b. A DA permit is obtained to authorize this project. This provision can be initiated by submitting an application for a DA permit to authorize all work, which has been done below or riverward of the Ordinary High Water elevation. The application should include any additional work proposed at this site. However, prior to acceptance of an application for a DA permit, you must sign the attached Tolling Agreement and furnish it to this office in the enclosed envelope.

Within 30 days from your receipt of this letter, the action directed in "a" above must be completed or the application specified in "b" above must be submitted.

An application packet is enclosed should the choice be to apply for a DA permit. The plans accompanying the permit application must be clear, concise, and of good reproducible quality. An original and two copies of each drawing on 8½ x 11-inch paper, similar to those examples shown on pages 16 and 17 of the pamphlet (EP 1145-2-1), must be submitted. A minimum number of sheets are desired. Each sheet must include the title block and other information as outlined in the pamphlet. Also, the application should designate all existing and proposed construction. Please note, the placement of additional fill or the performance of any additional work in these wetlands is prohibited until a DA permit is issued authorizing the work.

On receipt of a complete application including acceptable plans, we will begin the permit processing procedures. Normally, this will require issuance of a Public Notice allowing interested parties an opportunity to register objections or comments on the project.

Please be advised that although an application is made for the required DA permit, this violation cannot be considered resolved until the work is authorized under the requested permit or the unauthorized fill is removed and the necessary restoration of the worksite accomplished. In other words, should your request for a permit be denied the directive specified in "a" above may be reinstated.

If any questions arise concerning this matter, please contact us either by writing to Mr. Scott Matthews, Indianapolis Regulatory Office, 9799 Billings Road, Indianapolis, Indiana 46216-1055, or by calling (317)521-4226. Any correspondence on this matter should refer to our ID No. LRL-2011-922-sam.

Copies of this letter will be sent to the appropriate coordinating agencies (see enclosure for addresses).

Sincerely,

James M. Townsend
Chief, Regulatory Branch
Operations Division

Enclosures

Matthews/OP-FN/rb/301 Violation Letter.doc
McKay/OP-FN
Lengel/OC
Townsend/OP
RECORD COPY

ADDRESSES FOR COORDINATING AGENCIES

Ms. Sue Elston
USEPA - Region V
Watershed and Wetlands Branch
77 West Jackson Boulevard
Chicago, IL 60604

Mr. Scott Pruitt
U.S. Fish and Wildlife Service
620 South Walker Street
Bloomington, IN 47403-2121

Mr. Randy Braun
Indiana Department of Environmental Management
Office of Water Quality
100 North Senate Avenue
Indianapolis, IN 46204-6015

Ms. Christie Stanifer
Indiana Department of Natural Resources
Division of Fish & Wildlife
402 West Washington Street, Room W264
Indianapolis, IN 46204-2641

Mr. Mike Neyer
Indiana Department of Natural Resources
Division of Water
402 West Washington Street, Room W264
Indianapolis, IN 46204-2640

Dr. James Glass
Indiana Department of Natural Resources
Division of Historic Preservation
& Archaeology
402 West Washington Street, Room W274
Indianapolis, IN 46204

TOLLING AGREEMENT

WHEREAS, the United States of America, on behalf of the United States Army Corps of Engineers (Corps) may file a complaint against All American RV Resources for, inter alia, alleged violations of Sections 301(a), 309, & 404 of the Clean Water Act ("CWA"), 33 U.S.C. Sections 1311(a), 1319, & 1344 and/or Section 9, 10, or 13 of the Rivers and Harbors Act of 1899, 33 U.S.C. Sections 401, 403, or 407, including the discharge of fill material into 1.2 acres of wetlands abutting Blue Lake. The site is located at the Blue Lake Campground in Section 10, Township 32 North, Range 10 East, Whitely County, Indiana.

WHEREAS, the purpose of any such complaint would be to obtain appropriate injunctive relief and to impose appropriate civil or criminal penalties for potential defendant'(s) alleged violations of the statute(s) cited above;

WHEREAS, the Corps accepted an after-the-fact (ATF) permit application from the potential defendant(s) in an attempt to settle the above claims;

WHEREAS, both parties believe that their interests will best be served by continuing the ATF permit process without the disruption that might be occasioned should the United States file a complaint in the immediate future;

AND WHEREAS both parties acknowledge the requirement found at 33 C.F.R. 331.11(c) for an applicant for an ATF permit to provide a signed tolling agreement;

THEREFORE, the United States and potential defendant(s) stipulate and agree as follows:

1. The United States and potential defendant(s) agree that the time between the acceptance by the Corps of the ATF permit application and the final Corps decision (as defined at 33 CFR 331.10), **plus one year thereafter**, will not be included in calculating any statute of limitations that might be applicable to the alleged statutory violation(s) described above. Potential defendants agree not to assert, plead, or raise in any fashion on behalf of any party, whether by answer, motion, or otherwise, any defense or avoidance based on the running of any statute of limitations that may apply during that period or any defense or avoidance based on laches or other principle concerning the timeliness of commencing a civil action, based on the failure of the United States to file its complaint during that period.

2. Potential defendant(s) further agree not to transfer the property in question during the pendency of this tolling agreement nor during the pendency of any civil action brought as described above, without first notifying the United States and giving the United States a reasonable opportunity to oppose such transfer.

3. Nothing in this tolling agreement shall restrict or otherwise prevent the United States from filing a complaint regarding any alleged statutory violation(s) not described above, at any time.

4. This tolling agreement does not constitute any admission of liability on the part of potential defendant(s); nor does it constitute any admission or acknowledgment on the part of the United States that any statute of limitations has run or that any statute of limitations is applicable to the statutory claims described above.

5. This tolling agreement contains the entire agreement between the parties, and no statement, promise or inducement made by any party to this agreement, or any agent of such parties, that is not set forth in this agreement shall be valid or binding. This tolling agreement may not be enlarged, modified or altered except in writing signed by the parties. This tolling agreement may be executed in counterparts.

FOR the United States of America:

District Counsel

DATE

Louisville District, U.S. Army Corps of Engineers

FOR All American RV Resources I, LLC

DATE